

CHAPTER 14 CONSUMER AUTOMOTIVE COMPLAINT ARBITRATION

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1400 PURPOSE AND SCOPE

- 1400.1 The purpose of this chapter is to establish administrative rules and procedures for the implementation of the Automobile Consumer Protection Act of 1984 (Act).

AUTHORITY: Unless otherwise noted, the authority for this chapter is §10 of the Automobile Consumer Protection Act of 1984, D.C. Law 5-162, D.C. Code §40-1308 (1981).

SOURCE: Final Rulemaking published at 33 DCR 2958 (May 16, 1986).

EDITOR'S NOTE: Section 811 of D.C. Law 11-52 amended the Automobile Consumer Protection Act of 1984 by suspending enforcement of the act by the Department of Consumer and Regulatory Affairs until October 1, 1998 (D.C. Code §40-1301 *et seq.*).

1401 BOARD OF CONSUMER CLAIMS ARBITRATION

- 1401.1 The chairperson shall have the authority to sign any official document issued on behalf of the Board.
- 1401.2 The Board shall meet as often as required to fulfill its responsibilities as set forth in the Act.
- 1401.3 Four (4) members of the Board shall constitute a quorum for the purpose of transacting business.

- 1401.4 The Board may designate one (1) or more committees. Each committee shall consist of one (1) or more of the Board members.
- 1401.5 All meetings of the Board at which an official action is taken shall be open to the public.
- 1401.6 Any public record of a Board meeting shall be open for inspection during the regular business hours of the Department of Consumer and Regulatory Affairs (DCRA).
- 1401.7 Copies from the public record shall be available to the public and to parties upon payment of the charges fixed for copies.
- 1401.8 A designee of the Board shall exercise his or her delegated authority pursuant to the Act.

SOURCE: Final Rulemaking published at 33 DCR 2958 (May 16, 1986).

1402 FILING OF ARBITRATION CLAIMS

- 1402.1 Each claim for arbitration shall be filed at the Department of Consumer and Regulatory Affairs on Board approved complaint forms Monday through Friday, except legal holidays, from 8:30 a.m. until 4:30 p.m.
- 1402.2 A consumer may elect oral or documentary arbitration proceedings.
- 1402.3 The information on the complaint form shall include the following:
 - (a) The name, address, and telephone number of complainant;
 - (b) The name, address, and telephone number of complainant's legal counsel, if applicable;
 - (c) The motor vehicle information, including the date of purchase and date of delivery of the vehicle, the make, model and manufacturer of the vehicle, the vehicle identification number, the present mileage, and the condition of the vehicle when purchased (new or used);
 - (d) Any financial information related to the purchase, cash price, amount financed, name of lien holder, cost of financing;
 - (e) The name and address of the selling dealership;
 - (f) The name and address of the servicing dealership or facility;
 - (g) The information regarding the defect including the following:
 - (1) The nature of the defect;
 - (2) The date and mileage when the defect first occurred;

- (3) The date the defect was first reported to the dealer or manufacturer;
 - (4) The mileage when the defect was so reported;
 - (5) The dates on which the motor vehicle was at the dealership for repair since the purchase date; and
 - (6) The circumstances concerning any refusal of service by the dealer, if applicable;
- (h) The date and the nature of any oral or written communication with the manufacturer, selling or servicing dealership, or facility regarding the defect;
 - (i) A statement of the remedy the complainant is seeking;
 - (j) A copy of any warranties, including extended warranties, sales contracts, and other relevant documents;
 - (k) A copy of any correspondence between the complainant and the manufacturer or its representative, if available;
 - (l) A copy of each service order;
 - (m) The date the consumer good was purchased or service was received;
 - (n) A brief statement of the cause for dispute;
 - (o) The signature of the complainant; and
 - (p) The date the complaint form is signed.
- 1402.4 The completeness of a complaint shall be determined by DCRA representatives before being filed with the Board for arbitration purposes.
- 1402.5 Each complete complaint shall be stamped with the date received, assigned docket number, and filed until the next meeting of the Board.
- 1402.6 A consumer whose claim filed with the Department falls within but not limited to the following categories may have the claim submitted to the Board for arbitration; Provided, that the provider agrees in writing to participate in the arbitration process:
- (a) Furniture Repair;
 - (b) Appliance Repair;
 - (c) Home Furnishings Purchase;
 - (d) Home Furnishings Service;

- (e) Travel Services;
- (f) Billing for Professional Services;
- (g) Moving and Storage of Household Goods;
- (h) Auto Repair; and
- (i) Home Improvement.

- 1402.7 A non-refundable filing fee of twenty-five dollars (\$25.00) shall accompany each (complete) complaint.
- 1402.8 For any consumer filing a claim against a provider of any consumer good or service, a representative of DCRA shall attempt to obtain an agreement to arbitrate signed by either the provider or the provider's agent.
- 1402.9 The Board shall, within five (5) business days after a complete complaint is filed, determine whether the claim qualifies for arbitration or whether it is frivolous, fraudulent or beyond the legal authority of the Board.
- 1402.10 Each party to a claim shall receive written notification by certified mail of the Board's decision to accept a claim for arbitration. A notice of rejection shall be sent by first class mail to each party and shall state the reason for rejection.
- 1402.11 The respondent may file a written answer to the claim no later than five (5) days after receiving written notice of acceptance of the claim.

SOURCE: Final Rulemaking published at 33 DCR 2958, 2959 (May 16, 1986).

1403 FILING DOCUMENTS

- 1403.1 Each document, in addition to the complaint form, shall be signed and filed at the DCRA.
- 1403.2 Each document shall be filed Monday through Friday, except legal holidays, from 8:30 a.m. until 4:30 p.m.
- 1403.3 Each document, other than a form, shall be typed and double-spaced on opaque, eight and one-half by eleven inch (8½ in. x 11 in.) paper.
- 1403.4 Each document shall show the name of each party and the docket number.

SOURCE: Final Rulemaking published at 33 DCR 2958, 2961 (May 16, 1986).

1404 SELECTION OF ARBITRATION PANEL

- 1404.1 The Board, after accepting a claim for arbitration, shall determine the composition of the arbitration panel.

- 1404.2 The Board, in the notice of acceptance, shall give each party the names of the arbitrators of the proposed panel and information on the background of each of the arbitrators.
- 1404.3 Each party to the claim shall have five (5) days to accept or to reject the proposed single member or three (3) member panel.
- 1404.4 Each party may reject a proposed panel or single member twice; the third rejection shall be accepted only for good cause explained in writing.
- 1404.5 A notice of rejection of a proposed panel shall be in writing and delivered to the DCRA or the Board's designee, either in person or by certified mail.
- 1404.6 The Board shall convene the proposed panel within seven (7) days from the date the name(s) of the arbitrators listed in the proposed panel is mailed to the parties, unless as provided in §1404.3 a notice of rejection of the proposed panel has been received by the Board.
- 1404.7 The third rejection shall be the final opportunity for the parties to reject a proposed panel. The Board shall convene a panel thereafter.

SOURCE: Final Rulemaking published at 33 DCR 2958, 2961 (May 16, 1986).

1405 CONDUCT OF ORAL ARBITRATION HEARINGS

- 1405.1 Each arbitration hearing shall take place at the office of the DCRA or at any other place designated in a notice published in the *D.C. Register*.
- 1405.2 Each arbitration hearing shall be open to the public.
- 1405.3 The panel shall notify each party of the date, time, and location of the arbitration hearing by certified mail at least five (5) days before the hearing.
- 1405.4 The panel shall receive the case file at least five (5) days before the hearing.
- 1405.5 Upon approval of a written request for a continuance, another date shall be set within five (5) days of the originally scheduled hearing.
- 1405.6 The panel shall rule on any request for a continuance of a hearing; any continuance shall be within five (5) days of the originally scheduled hearing.
- 1405.7 An arbitration hearing may proceed in the absence of a party who, after due notice, fails to appear.
- 1405.8 Each arbitration hearing shall comply with the hearing procedures set forth in the District of Columbia Administrative Procedure Act (DCAPA).
- 1405.9 Each party shall have the right to do the following:
- (a) To present oral and written evidence;

- (b) To present witnesses;
 - (c) To cross-examine witnesses;
 - (d) To enter objections; and
 - (e) To assert any other right essential to a fair hearing.
- 1405.10 Any party presenting written evidence at a hearing shall provide a copy of the evidence for each member of the panel and for the opposing party.
- 1405.11 The panel shall receive any evidence which, in the discretion of the panel, is not irrelevant, immaterial, unduly repetitious, or otherwise unreliable or improper.
- 1405.12 The panel may take official notice of any matter of common knowledge.
- 1405.13 The panel shall require each witness to testify under oath that his or her statements are true to the best of his or her knowledge.
- 1405.14 The panel may receive the affidavit of a witness not present at the hearing.
- 1405.15 Each party shall within five (5) days of the close of the hearing file any additional evidence which the panel requests and considers necessary for a fair resolution of the dispute.
- 1405.16 The panel may schedule a vehicle inspection if considered necessary.
- 1405.17 Each party shall have the right to have an attorney present the party's case before the panel; a third person may act as an interpreter if a language barrier or physical impairment exists.
- 1405.18 Any party who elects to have an attorney appear shall file a notice stating the attorney's name, D.C. bar number, address, and phone number at least two (2) days before the scheduled hearing; DCRA shall immediately forward this information to the opposing party.
- 1405.19 The Board may allow a third party who is not an attorney to assist a party in the presentation of a case, or to present a case on behalf of a party under the following conditions:
- (a) If the name, address and phone number of the third party is furnished to the Board and the other party two (2) days before the hearing; and
 - (b) If the Board determines that the assistance or presentation by the third party meets the following requirements:
 - (1) It does not violate any rule or order of the District of Columbia Court of Appeals;
 - (2) It furthers the interest of justice and the presentation before the Board; and

(3) It does not unfairly prejudice the other party.

- 1405.20 An arbitrator's decision shall be submitted to the Board forty-five (45) days after notice has been sent to the parties, that the claim for arbitration has been accepted.
- 1405.21 The panel shall declare a hearing closed after the presentation of evidence is completed by each party. If the panel has requested any party to file additional evidence, the hearing shall be considered closed at the end of the fifth (5th) day thereafter.
- 1405.22 Once a hearing is closed, additional evidence shall not be accepted or filed (except in the presence of extraordinary circumstances).
- 1405.23 There shall be no direct communications between any party and the panel other than at the oral hearing. Any other oral or written communications between any party and any member of the panel shall be channeled through DCRA for transmittal to the appropriate individual. The panel member shall report in writing, any prohibited contact to the DCRA so that it can be noted in the case record.

SOURCE: Final Rulemaking published at 33 DCR 2958, 2962 (May 16, 1986).

1406 CONDUCT OF DOCUMENTARY ARBITRATION HEARINGS

- 1406.1 If the complainant elects a documentary arbitration procedure, the Board shall gather and disseminate the documentary information and evidence in accordance with the procedures under this section.
- 1406.2 The Board shall notify the complainant by certified mail that he or she shall submit a sworn or affirmed statement as to the facts of the dispute and any evidence which he or she wishes the panel to consider. The complainant shall forward the sworn or affirmed statement documentation to the Board within fifteen (15) days from the date of his or her receipt of the certified notice.
- 1406.3 The Board shall notify the respondent of the dispute by certified mail. Included with the notice shall be a copy of the complainant's request for arbitration.
- 1406.4 The respondent shall submit a sworn or affirmed statement as to the facts of the dispute and any evidence the respondent wishes the panel to consider to the Board within fifteen (15) days from the date of the respondent's receipt of the certified notice.
- 1406.5 Upon receipt of both the complainant's and respondent's sworn or affirmed statements and documentary evidence, the Board, shall by certified mail, forward copies of the complainant's submissions to the respondent and forward copies of the respondent's submissions to the complainant.
- 1406.6 Each party shall have the opportunity to respond to the opposing party's submissions. Each response shall be submitted in writing to the Board within ten (10) days from the date of the responding party's receipt of the documents.

1406.7 At the documentary hearing, the Board shall take the following actions:

- (a) Review each document and statements;
- (b) Consult with an appointed technical expert, as necessary;
- (c) Seek further information or documents from either or each party; and
- (d) Schedule inspections, if necessary.

1406.8 Any evidence and statements received by the Board shall be considered part of the record.

SOURCE: Final Rulemaking published at 33 DCR 2958, 2964 (May 16, 1986).

1407 - 1408 [RESERVED]

1409 TECHNICAL EXPERTS

1409.1 Each party may recommend the names of candidates for inclusion within a pool from which the panel select the technical expert(s).

1409.2 The technical expert shall sign a written oath attesting to his or her impartiality before the beginning of each arbitration hearing to which he or she is assigned.

1409.3 The comments and advice of the panel's technical expert shall be offered at any stage of the hearing, either at the discretion of the panel, or at the request of any party.

1409.4 The technical experts shall bill the Board for services provided, in accordance with District Government procedure.

1409.5 The arbitration panel shall assess the costs of the technical expert to the losing party however, this assessment may be waived upon a demonstration of financial hardship.

SOURCE: Final Rulemaking published at 33 DCR 2958, 2965 (May 16, 1986).

1410 RECORDING OF ARBITRATION HEARING

1410.1 Each arbitration hearing shall be recorded.

1410.2 At the close of any arbitration hearing, any party may file a request for a written transcript of the hearing.

1410.3 The party requesting a written transcript shall be charged for the cost of preparing that transcript or any portion of it. If each party makes a request, the cost of preparation shall be shared equally.

1410.4 If no request is filed, the panel may order a transcript prepared.

SOURCE: Final Rulemaking published at 33 DCR 2958, 2966 (May 16, 1986).

1411 SUBPOENAS

1411.1 Pursuant to §4(o), D.C. Law 5-162, the Board may issue a subpoena for the attendance of a witness and for the production of books, records, documents, and other evidence.

1411.2 Any party may serve a subpoena upon any other party, witness or person holding relevant documents. The individual or entity served shall have five (5) business days from date of service of the subpoena to respond.

1411.3 Witnesses other than those employed by the District of Columbia acting in their official capacity as an employee of the District Government, summoned to appear before the Board shall be entitled to the same fees as are paid witnesses for attendance before the Superior Court of the District of Columbia but the fees need not be paid the witnesses in advance of their appearing and testifying, or producing books, records, papers, documents, or other legal evidence before the Board.

1411.4 The Board may require the party on whose behalf the subpoena is issued to pay the reasonable costs of service.

1411.5 Any individual or entity upon whom a subpoena is served may seek to have the subpoena quashed or limited. The written motion shall state the ground or grounds on which it is based and shall be filed no later than five (5) days from service of the subpoena.

1411.6 A subpoena may be quashed or limited on any of the following grounds:

- (a) The subpoena is overbroad;
- (b) The evidence sought through the subpoena is irrelevant to the case;
- (c) The subpoena would violate a legally recognized privilege; or
- (d) The lack of jurisdiction, improper service, or other procedural defect.

1411.7 A subpoena may be served within the District of Columbia or outside of the District of Columbia if the location is within one hundred (100) miles of the location of the hearing, or where a statute permits.

- 1411.8 A subpoena shall be served on an individual or entity using any of the following methods:
- (a) By delivering the subpoena to the individual personally;
 - (b) By leaving the subpoena at his or her usual place of business or at his or her usual residence with a person over the age of sixteen (16) years who is employed or residing at that place;
 - (c) By registered or certified mail, return receipt requested, sent to the individual's last known address; or
 - (d) By delivering or mailing through registered or certified mail with return receipt requested, the subpoena to an officer, managing or general agent or to any other person authorized to receive service of process for an entity.
- 1411.9 Any individual at least eighteen (18) years of age and not a party to the claim may serve a subpoena.
- 1411.10 The Board may apply to the proper court for an order requiring obedience, if a person refuses any of the following requirements:
- (a) To respond to a subpoena;
 - (b) To take the oath or affirmation as a witness; or
 - (c) To obey any lawful order of an arbitrator;

SOURCE: Final Rulemaking published at 33 DCR 2958, 2966 (May 16, 1986).

1412 - 1413 [RESERVED]

1414 DECISIONS OF THE ARBITRATION PANEL

- 1414.1 Each decision of an arbitration panel shall be in writing and in the name of the Board.
- 1414.2 Each decision shall be rendered no later than sixty (60) days from the date the Board mailed the notice of acceptance. The period between the rejection and replacement of any panel shall not be counted.
- 1414.3 The testimony and exhibits, together with all other papers and requests filed, and matters not presented in evidence but with which official notice has been taken shall constitute the exclusive record for the decision.
- 1414.4 Each decision shall contain the following information:

- (a) The panel's finding of act and reason for its decision;
- (b) The specific terms of the award, if applicable;
- (c) The date or time limit and place for performance, if applicable; and
- (d) A notice stating that any party may appeal to the D.C. Superior Court within twenty (20) days.

1414.5 The Board, upon verification of proper service, may issue a default decision in favor of the complainant upon failure of the respondent to appear in person at an oral arbitration or upon failure of the respondent to submit a written statement when a documentary hearing has been granted.

1414.6 The Board, upon verification of proper service, may dismiss the complainant's claim upon failure of the complainant to appear in person at an oral arbitration proceeding or upon failure of the complainant to submit a written statement when a documentary hearing has been granted.

1414.7 The Board shall send, by certified mail, a copy of its decision to each party.

SOURCE: Final Rulemaking published at 33 DCR 2958, 2966 (May 16, 1986).

1415 PRE-DECISION SETTLEMENTS

1415.1 A party shall notify DCRA if the dispute is settled after the filing and before the decision is rendered.

1415.2 The DCRA shall verify the terms of the settlement and the date for performance agreed upon, if applicable, and shall obtain a statement of settlement signed by the parties.

1415.3 Upon receipt of a properly executed settlement, the arbitrator(s) shall enter an order on the basis of the settlement. The order shall indicate the terms of the settlement.

1415.4 The settlement order shall be sent by certified mail to each party.

1415.5 The settlement order shall constitute an order of the Board for purposes of §4(r) of the Act.

SOURCE: Final Rulemaking published at 33 DCR 2958, 2968 (May 16, 1986).

1416 COMPUTATION OF TIME

1416.1 In computing the periods of time under this chapter, the day of the act or event from which the time period begins to run shall not be counted. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period continues to run until the next day that is not a Saturday, Sunday, or legal holiday.

- 1416.2 When the period of time is less than seven (7) days, Saturdays, Sundays, and legal holidays shall not be included in the computation time.
- 1416.3 Legal holidays shall include those set forth in D.C. Code §28-2701 *et seq.*, (1996 Repl. Vol.), or any other day designated as a legal holiday in the District of Columbia.
- 1416.4 Three (3) days shall be added to the prescribed time period whenever a party is served a notice or document by mail.

SOURCE: Final Rulemaking published at 33 DCR 2958, 2969 (May 16, 1986).

1417 - 1419 [RESERVED]

1420 DISCLOSURE OF RIGHTS TO NEW VEHICLE PURCHASERS

- 1420.1 The manufacturer, its agent, or authorized dealer shall provide written notification as prescribed in §1420.2 to the prospective consumer of any motor vehicle to be sold or registered in the District of Columbia.
- 1420.2 The language required to §1420.1 shall read as follows:

NOTICE TO PURCHASER

IF, AFTER A REASONABLE NUMBER OF ATTEMPTS, THE MANUFACTURER, ITS AGENT, OR AUTHORIZED DEALER IS UNABLE TO REPAIR OR CORRECT ANY NON-CONFORMITY, DEFECT, OR CONDITION WHICH RESULTS IN SIGNIFICANT IMPAIRMENT OF THE MOTOR VEHICLE, THE MANUFACTURER, AT THE OPTION OF THE CONSUMER, SHALL REPLACE THE MOTOR VEHICLE WITH A COMPARABLE MOTOR VEHICLE, OR ACCEPT RETURN OF THE MOTOR VEHICLE FROM THE CONSUMER AND REFUND TO THE CONSUMER THE FULL PURCHASE PRICE, INCLUDING ALL SALES TAX, LICENSE FEES, REGISTRATION FEES, AND ANY SIMILAR GOVERNMENT CHARGES. IF YOU HAVE ANY QUESTIONS CONCERNING YOUR RIGHTS, YOU MAY CONTACT THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

- 1420.3 Each notice shall be in type no smaller than eighteen (18) point and in all upper case letters.
- 1420.4 The purchaser shall sign the notice and be provided a signed copy by the manufacturer, its agent, or authorized dealer; the selling dealer shall retain a signed copy for three (3) years.

SOURCE: Final Rulemaking published at 33 DCR 2958, 2969 (May 16, 1986).

1421 DISCLOSURE OF DAMAGE OR DEFECT OF USED MOTOR VEHICLES

- 1421.1 A motor vehicle dealer shall provide each prospective consumer of a used motor vehicle offered for sale written notice of any material mechanical defect in the motor vehicle and any damage sustained by the motor vehicle because of fire, water, collision, or other causes for which the cost of repairs exceeded one thousand dollars (\$1,000), when the defect or damage was known to the dealer.
- 1421.2 The notice required by §1421.1 shall be included on the car order and bill of sale and shall state the specific defect or damage known to the dealer in a type size equal to the largest type size that appears on the car order and bill of sale.
- 1421.3 Each motor vehicle dealer shall display on the windshield of each used motor vehicle offered for sale, a sign with all upper case letters no less than three inches high (3" H.), with the appropriate blank checked, that says:

This motor vehicle has _____ or has not
_____ been inspected to determine if defects exist.

SOURCE: Final Rulemaking published at 33 DCR 2958, 2970 (May 16, 1986).

1499 DEFINITIONS

- 1499.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Complete complaint - a signed complaint, together with all the other necessary documents and agreements as defined in §§1402.2 and 1402.8.

Panel - one or more arbitrators selected to hear consumer claims pursuant to D.C. Law 5-162.

Respondent - any manufacturer, its dealer, or agent, or provider of any good or service that is subject to a claim filed under the Act.

SOURCE: Final Rulemaking published at 33 DCR 2958, 2971 (May 16, 1986).

